

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6615**

**PETITION OF SETH BELFORD AND ALISSA PELTZMAN**

**OPINION OF THE BOARD  
(Hearing Held May 22, 2018)  
(Effective Date of Opinion: May 29, 2018)**

Case No. A-6615 is an application for a variance necessary for the construction of a carport enclosure. The proposed construction requires a variance of 12.10 feet as it is within 4.90 feet of the left (east) side lot line. The required setback is seventeen (17) feet, in accordance with Section 59-4.4.8.B.2 of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, May 22, 2019. Petitioner Seth Belford appeared pro se at the hearing in support of the application, assisted by his architect, John Mangan, AIA, and his builder, Josh Rosenthal of Cabin John Builders.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1.     The subject property is Lot 17, Block 12, Landon Woods Subdivision, located at 6112 Maiden Lane, Bethesda, MD, 20817 in the R-90 Zone. It is a rectangular property, 9,938 square feet in size, located on the south side of Maiden Lane, opposite that street's intersection with Holiday Terrace.

2.     The Petitioner is seeking to "enclose an existing non-conforming carport structure" that is located 4.90 feet from the left (east) side lot line at its closest point. See Exhibit 3. The building permit denial also indicates that the existing structure is "non-conforming." See Exhibit 6. The Petitioners' Statement of Justification ("Statement") notes that the Petitioners "inherited this non-conforming structure [carport] when they purchased the

property” in 2013, and that they “had no action in creating the non-conformance.” See Exhibit 3.

3. The Statement indicates that the existing house on the subject property was built in 1956, in a subdivision that “was planned and started prior to the 1954 zoning change.”<sup>1</sup> It states that “much of the neighborhood was built to the pre 1954 setbacks and have reduced side yard setbacks on both sides. There are several properties in the neighborhood that exceed the 8 and 25 foot zoning ordinance of 1954. (see attached exhibit #4).” See Exhibits 3 and 5(d). Citing the fact that “[t]here are a number of homes in the current subdivision that do not conform to the existing side yard setback,” the Statement concludes that “[w]hat is being proposed in this variance request does not adversely affect the established historic or traditional development pattern of the street and neighborhood.” See Exhibit 3.

4. In describing the impact of the proposed carport enclosure, the Statement states that:

What is being proposed is the most efficient and least obtrusive way to bring the house up to the modern standards that most of the houses in the sub-division have been improved to, and is proposed in a manner that is in conformance to the existing pattern of the neighborhood, without making any material change to the form and shape of an existing non-conforming condition.

See Exhibit 3. See also Exhibits 5(a) and (c). The Statement notes that the proposed carport enclosure “will not have any adverse effects on the abutting and confronting properties” since the Petitioners are “simply asking to enclose a structure that already exists.” See Exhibit 3. The record contains a letter of support from the Petitioners’ abutting neighbors to the left (east) which indicates that “[w]hile [they] do not necessarily support a large additional massing or 2<sup>nd</sup> story space being added over the building line on that side of the home, [they] do appreciate that the impact of closing in the car port is minimal and in line with other houses in the neighborhood.” See Exhibit 9.

5. At the hearing, John Mangan, the Petitioners’ architect, testified that the subject property has a nonconforming condition in that its carport is located in the side setback. He testified that the subject property actually meets two of the five criteria in the first element (Section 59-7.3.2.E.2.a) of the variance test (Sections 59-7.3.2.E.2.a.ii and v), testifying that in addition to using an existing nonconforming structure, the proposed carport enclosure substantially conforms to the established historic or traditional development pattern of this street and neighborhood. See Exhibits 3 and 5(d).

6. The Petitioners’ builder, Josh Rosenthal, testified in response to a Board question asking when the carport was constructed that while he could not answer that question definitively, based on the materials and techniques used for the carport and other

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<sup>1</sup> The Statement states that the changes made to the Zoning Ordinance in 1954 revised the required side yard setback from seven (7) feet on each side to a total of 25 feet, with no side less than eight (8) feet. See Exhibit 3.

anecdotal evidence, he believes that the carport has always been a part of this house, and that at a minimum, it dates back to the 1970s. In response to additional questioning, he testified that he did not see any variances for this property in the County records.

Mr. Rosenthal testified that there were a number of properties in this neighborhood which, like the subject property, were subdivided before the 1954 zoning changes but on which homes were constructed after that change, and which violate the required setbacks. See Exhibit 5(d). He testified that this universe becomes even larger if one includes the properties that were both subdivided and built prior to the zoning change, adding that a large number of the original homes on those properties have been demolished and rebuilt to the seven (7) foot side setbacks in effect at the time of their original construction. Mr. Rosenthal stated that the fact that this property was subdivided prior to the 1954 zoning change and developed afterwards makes this property unique.

## FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, based on the Statement and the building permit denial, that the existing carport is a nonconforming structure which does not conform to the required side lot line setback. See Exhibits 3 and 4. The Board further finds that the variance requested is needed to allow the Petitioners to enclose the existing carport. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test.

*Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds, based on the Statement, the mapped photographs of other homes in the neighborhood which was submitted with the Statement, and the testimony of Mr. Mangan and Mr. Rosenthal, that there are a large number of homes in this neighborhood that are located closer to the side lot line than would be allowed by the Zoning Ordinance. See Exhibits 3 and 5(d). Thus the Board finds that the grant of this variance would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners purchased this property in 2013, and were not responsible for the construction of the carport, which existed at their time of purchase, or for the pattern of development in the neighborhood. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioners.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, per the Statement and Exhibits 5(a) and (c), that the proposed enclosure of the existing carport would not make "any material change to the form and shape of an existing non-conforming condition," and accordingly that the requested variance is the minimum necessary to overcome the practical difficulty that full compliance with the setback requirements of the Zoning Ordinance would otherwise impose.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the grant of this variance, needed to allow the proposed enclosure of this existing carport, continues the residential use of the home and can be granted without substantial impairment to the intent and integrity of the Bethesda-Chevy Chase Master Plan (1990), which seeks to continue "the existing residential character and patterns so well established" in this area of Bethesda (Mid-Bethesda – Northern B-CC).

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, based on the assertions made in the Statement, that granting the requested variance to allow enclosure of the existing carport will not increase the extent of the existing encroachment, and will not adversely affect the established historic or traditional development pattern of this street and neighborhood. See Exhibit 3. The Board further finds that the neighbors who would be most affected have indicated that they support the grant of this variance to permit the enclosure of the existing carport, that it will have minimal impact, and that it is "in line with other houses in the neighborhood." See Exhibit 9. For these reasons, the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested side lot line variance to allow the enclosure of an existing carport is **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, Vice Chair, with Bruce Goldensohn and Jon W. Cook in agreement, and with Katherine Freeman not in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 29th day of May, 2019.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.